IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 73 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME TAX

Versus

STHANAKVASI VARDHMAN VANIK JAIN SANGH,

Appearance:

1. INCOME TAX REFERENCE No. 73 of 1993
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

This reference was made at the instance of the revenue and the following question of law was referred for the opinion of this Court :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that donation received by the assessee trust of Rs.1,85,064-00 which was not utilized for the object of the trust, was not income of the trust ?"

2. The assessment year involved in this reference is assessment year 1986-87. The assessee is a Public Charitable Trust. The Income-tax Officer has found from the perusal of the balance sheet that an amount of Rs.1,85,064/- received by the assessee during the accounting period relevant to the assessment year in question was taken to the balance sheet directly. The said amount was received by the assessee towards construction of wadi for the caste people. The amount was thus received towards the object of the trust. The Income-tax Officer has taken the view that the amount in question represented income of the assessee and the same was added in the total income of the assessee.

3. Being aggrieved by the said order of the Income-tax Officer, the assessee has preferred an appeal before the Deputy Commissioner of Income-tax (Appeals) and before him a contention was raised by the assessee that the amount was received by the assessee with a specific direction for construction of Wadi and hence the same shall form part of the corpus of the trust. The Deputy Commissioner of Income-tax (Appeals), therefore, directed the Income-tax Officer to exclude that amount from the computation of income of the assessee.

4. The revenue has taken up the said issue before the Tribunal in second appeal and the Tribunal following its earlier order in the case of Swetamber Murtipujak Topagachha Jain Sangh has confirmed the order of the Deputy Commissioner of Income-tax (Appeals).

5. While drawing the statement of case in the present reference, the Tribunal has also observed that an identical question has been referred to in the case of another assessee in R.A. No. 1228/Ahd/1980 vide statement of case dated 3.2.1983.

6. Reference arising out of the R.A. No. 1228/Ahd/1980 in the case of Shri Plot Swetamber Murti Pujak Jain Mandal being Income-tax Reference No. 141 of 1983 was decided by this Court on 19.12.1995. In that case also, this Court was called upon to decide the question as to whether the contributions to Deva Dravya fund should be treated as specifically earmarked for the

corpus of the trust and consequently these contributions were out of the purview of the provisions of Section 12 of the Act. While deciding the said reference, this Court has taken the view that Deva Dravya fund is a fund maintained for a specific purpose and forms part of the corpus. This Court has further observed that it is an established maxim of the Jain religion that Deva Dravya was religious property which cannot be diverted to purposes other than those which are considered secred by the Jain Scriptures. This Court has, therefore, confirmed the view taken by the Tribunal and decided the reference in favour of the assessee and against the revenue.

7. In the present reference, all the three authorities below have found that the amount was received by the assessee-trust for the purpose of construction of Wadi and it is the case of the assessee althroughout that since the said amount was received towards corpus of the trust and for a specific purpose, it would not form part of the income of the trust and the said amount is exempt looking to the provisions contained in Section 12 of the Act. Section 12 of the Act reads as under :-

"12. Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly."

8. On the plain reading of section, it is obvious that any voluntary contribution which is made with a specific direction that they shall form part of the corpus of the trust or institution would not be deemed to be income derived from the property held under trust wholly for charitable or religious purposes. In our view, the earlier decision of this Court in the case of Shri Plot Swetamber Murti Pujak Jain Mandal as well as the provisions contained in section 12 of the Act squarely cover the issue in favour of the assessee.

9. However, at this stage, Mr MR Bhatt, the learned senior standing counsel for the revenue has invited our attention to the decision of the Supreme Court in the case of State of Kerala vs. M.P. Shanti Verma Jain,

(1998) 231 ITR 787 wherein it is held that the objects of the trust clearly showed that the trust was meant for propagation of the Jain religion and rendering help to the followers of the Jain religion. Even the medical aid and similar facilities were to be rendered to persons devoted to the Jain religion and the medical aid could be given to non-Jains only if any member of the families managing the trust, showed sympathy and was interested in their treatment. The Tribunal was right in its conclusion that the dominant purpose of the trust was propagation of the Jain religion and to serve its followers and any part of agricultural income of the trust spent in the State of Kerala also could not be treated as an allowable item of expense. The Court has further held that the assessee-trust was not entitled to exemption under the Kerala Agricultural Income-tax Act, 1950. In the case before the Supreme Court, the issue was quite different. There was no contention to the effect that any contribution received by the trust was towards a specific purpose and it would form part of the corpus of the trust fund. As a matter of fact, the provisions of Section 12 were not invoked at all and were not referred to. We are, therefore, of the view that no support can be derived from this judgment.

10. Mr Bhatt has also invited our attention to the decision of the Supreme Court in the case of Commissioner of Income-tax vs. Nagpur Hotel Owners' Association, (2001) 247 ITR 201. In that case, the issue was as to whether the assessee has to move an application before the Income-tax Officer for the purpose of claiming exemption under Section 11 of the Act on the ground that the income is to be accumulated and the said income shall not form part of the taxable income. In that context, the Supreme Court has observed as under :-

> "It is abundantly clear from the wording of sub-section (2) of section 11 of the Income-tax Act, 1961, that it is mandatory for the person claiming the benefit of section 11 to intimate to the assessing authority the particulars required, under rule 17 in Form No. 10 of the Income-tax Rules, 1962. If during the assessment proceedings, the Assessing Officer does not have the necessary information, the question of excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arisen from section 11 and is subject to the conditions specified

> therein. Therefore, it is necessary that the assessing authority must have this information at the time he completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the benefit of such exclusion. Even assuming that there is no valid limitation prescribed under the Act and the Rules, it is reasonable to presume that the intimation required under section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income the assessing authority cannot entertain the claim of the assessee under section 11 of the Act, therefore, compliance with the requirement of the Act will have to be any time before the assessment proceedings. Further, any claim for giving the benefit of section 11 on the basis of information supplier subsequent to the completion of assessment would mean that the assessment order will have to be reopened. The Act does not contemplate such reopening of the assessment."

11. As stated earlier, in the present reference, there is no question of seeking any permission of the Income-tax Officer for accumulation of income as the contribution was received by the assessee-trust for a specific purpose and towards maintenance of the trust. We are, therefore, of the view that the reliance placed on this decision is also misconceived.

12. Mr Bhatt has further invited our attention to the decision of the Supreme Court in Commissioner of Income-tax vs. Programme for Community Organization, (2001) 248 ITR 1. In that case, the facts before the Supreme Court were that the assessee-trust received donations in the aggregate sum of Rs.2,57,376/-. It applied therefrom for its charitable purposes the aggregate sum of Rs.1,70,369/- leaving a balance of Rs.87,010/-. On these facts, the Court has taken the view that on the plain language of section 11(1)(a) of the Income-tax Act, 1961, the assessee was entitled to accumulate 25 per cent of Rs.2,57,376/- and not merely 25 per cent of the balance of Rs.87,010/-.

13. The issue involved in the present reference is quite different as in the present reference the assessee is claiming the benefit of Section 11 on the ground that the contribution received by the assessee-trust was towards a specific purpose for construction of Wadi and

hence, it would not be treated as the income of the trust.

14. In the above view of the matter, we are of the view that the Tribunal has not committed any error in holding that the donation received by the assessee-trust of Rs.1,85,064-00 which was not utilized for the object of the trust was not income of the trust. We, therefore, answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

14. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-